

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA . CRIMINAL ACTION NO.
 . 4:09-CR-172-A
V. .
 .
NGOZI NNAJI . Fort Worth, Texas
EMMANUEL NNAJI . June 4, 2010
.

TRANSCRIPT OF PROCEEDINGS
(Sentencing Hearing)
BEFORE THE HONORABLE JOHN MCBRYDE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: MS. SUSAN L. FRENCH
MR. MICHAEL J. FRANK
U.S. Department of Justice
601 D Street NW, Room 5132
Washington, DC 20530
(214) 514-3104

For Defendant N. Nnaji: MR. REED W. PROSPERE
Prospere, Russell & Dean
8111 Preston Road, Suite 500
Dallas, Texas 75225
(214) 750-8555

For Defendant E. Nnaji: MS. MARLO P. CADEDDU
Attorney at Law
3232 McKinney Avenue, Suite 700
Dallas, Texas 75204
(214) 220-9000

Court Reporter: MS. ANA P. WARREN
U.S. District Court Reporter
501 W. 10th Street, Room 201
Fort Worth, Texas 76102-3637
(817) 850-6681

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produced by computer-aided transcription.

P R O C E E D I N G S

(Commencing, 9:30 a.m.)

THE COURT: I'm next calling for sentencing Number -- actually, it's two defendants in this case. It's Number 4:09-CR-172-A. It's United States of America versus -- I'm having a hard time pronouncing these names. I think it's Nnaji --

MR. PROSPERE: Ngozi Nnaji and Emmanuel Nnaji.

THE COURT: Okay. And the other defendant is Emmanuel Nnaji?

MS. CADEDDU: Yes, Your Honor.

THE COURT: And Ms. French and Mr. Frank are here for the government.

MS. FRENCH: Yes, Your Honor.

THE COURT: And Mr. Prospere is here for --

MR. PROSPERE: Ngozi.

THE COURT: Ngozi.

And Mr. Westfall?

MS. CADEDDU: No, Your Honor. You gave Mr. Westfall permission to delegate to me today, Marlo Cadeddu, for Mr. Ngozi -- Mr. Nnaji. I'm sorry.

THE COURT: Marlo Cadeddu?

MS. CADEDDU: Cadeddu, Yes, Your Honor.

THE COURT: Cadeddu is here for Emmanuel Nnaji.

Ms. Nnaji, state your name for the record.

1 DEFENDANT E. NNAJI: Emmanuel Nnaji.

2 THE COURT: State your full name for the record.

3 DEFENDANT N. NNAJI: Ngozi Nnaji.

4 THE COURT: And, Mr. Nnaji, state your full name for
5 the record.

6 DEFENDANT E. NNAJI: Emmanuel Nnaji.

7 THE COURT: Okay. I might combine the hearing in one
8 area because, apparently, there is a common issue that we
9 might deal with at the same time, but before we get to that --
10 this is directed to Ms. Nnaji.

11 You appeared before me for a jury trial -- well, both of
12 you did. This is directed to both of you.

13 Both of you appeared before me for a jury trial that
14 started on February 1 of 2010. On February 2, 2010, the jury
15 returned a verdict finding each of you guilty of Counts 1, 2,
16 3, 4, and 5 of the indictment. Those counts -- Count 1
17 charged both of you with forced labor conspiracy. That's
18 Count 1. Count 2 charged both of you with forced labor and
19 attempted force labor. Count 3 charged each of you with
20 harboring domestic worker for financial gain. Count 4 charged
21 each of you with conspiracy to harbor for financial gain. And
22 Count 5 charged each of you with document servitude and aiding
23 and abetting

24 Now, in addition to those counts, the jury found Ms. Nnaji
25 guilty of Count 6 of the indictment, which charged false

1 statement to federal agents, and the jury found Defendant --
2 Mr. Nnaji guilty of the offense charged by Count 7 of the
3 indictment, false statements to a federal agent. Of course,
4 we're here today for sentencing based on the convictions
5 resulting from the verdict of the jury.

6 Mr. Prospere, did you and your client receive in a timely
7 manner the presentence report and the addendum to it?

8 MR. PROSPERE: Yes, Judge.

9 THE COURT: And did both of you read those items and
10 then discuss them with each other?

11 MR. PROSPERE: Yes, sir.

12 THE COURT: Okay. There was one objection to the
13 presentence report made by your client that had to do with the
14 two-level enhancement for obstruction of justice.

15 You've seen the government's response to that objection
16 and you've seen the probation officer's response, and you've
17 also seen my order that I tentatively concluded that it's
18 without merit. Do you still wish to pursue that objection on
19 behalf of your client?

20 MR. PROSPERE: Judge, we would. We understand that
21 your tentative position is --

22 THE COURT: Well, that's fine. If you want to pursue
23 it, you certainly have a right to.

24 Now, you have also seen that I have a concern that,
25 perhaps, your client should receive a two-level increase.

1 It's 2A3.1(B)(4)(b), based on the fact that the victim
2 received serious bodily injury. The probation officer didn't
3 give that increase, and I've discussed that with the probation
4 officer, and the probation officer was uncertain as to whether
5 the record would support a finding that your client should
6 have foreseen that, which I gather to be relevant conduct,
7 that it would have to be something -- apparently, there was no
8 question that the events occurred, the sexual assaults
9 occurred, and there is no question that it was related to the
10 offenses of conviction, but I gather to be relevant conduct
11 that would be chargeable against your client. It would have
12 to be something that she could have reasonably foreseen would
13 happen or knew was happening.

14 It occurred to me, in fact, that she should have foreseen
15 it. It's happening right there in the house. At least some
16 of the sexual harassment is happening right there in the
17 house. I'm not sure -- some serious things were happening
18 right there in the house where your client was situated,
19 Mr. Prospere.

20 Let me ask the government's attorney what they think.
21 They didn't object to the presentence report because of the
22 failure of the probation officer to give that two-level
23 increase. So maybe the government agrees that it shouldn't be
24 given. What is the government's position, Ms. French?

25 MS. FRENCH: Judge, the government didn't disagree.

1 I think the evidence at trial was the victim testified on
2 direct that there was an incident when Emmanuel Nnaji came
3 into her bedroom at night when she had the children in bed
4 with her, and he groped and fondled her, and she cried out,
5 and it drew the attention of the female defendant, Ngozi. I
6 don't know if this was part of the testimony at trial, but it
7 was in the 302s that were supplied to probation, that she was
8 made to apologize the next day to Ngozi for waking her up that
9 night.

10 I think, in addition, the evidence is that the -- Ngozi
11 and Emmanuel Nnaji worked different shifts and that there was
12 a second incident that she testified -- and I say that because
13 she was aware that Emmanuel was alone with Cecilia, the
14 victim, for extended periods of time.

15 I also don't know if this was actually part of the
16 testimony, but I know it's in the FBI reports of interview,
17 that at the time the Nnaji's moved to the second house, that
18 Emmanuel Nnaji had all of the locks -- had locks put on all
19 the bedroom doors except the bedroom where Cecilia slept with
20 the children, and in the 302, the report of interview, says
21 that his statement to the victim was that he wanted easy
22 access to her children, but, in fact, she begged him to put
23 the lock on the door so she could protect herself.

24 Even if there wasn't direct evidence at trial that Ngozi
25 Nnaji knew that the rapes were occurring, she could certainly

1 infer from the conduct of him coming in her bedroom at
2 nighttime and fondling her, and, in fact, the only room that
3 did not have a lock on the door was Cecilia's.

4 There was a further incident after Michael was born that
5 she testified about at trial when Emmanuel took Cecilia to buy
6 a goat to cook as a celebration dinner --

7 THE COURT: I remember the details of that.

8 MS. FRENCH: Right. And they came back late, and
9 there was, apparently, an incident, and, apparently, Emmanuel
10 did not very well explain the extended absence. The victim
11 explained what happened during that time.

12 THE COURT: Well, I think the issue is, can the Court
13 find from a preponderance of the evidence based on the facts
14 you've related, some of which are not related in the
15 presentence report, that she reasonably should have known. I
16 think -- let me see.

17 MS. FRENCH: I believe the evidence that is before
18 the Court from the trial that was before the jury is the
19 testimony of the victim about the incident at nighttime when
20 Emmanuel came into her room and fondled her, and she screamed
21 out and drew the attention of Ngozi. That is what I think the
22 evidence is before the Court.

23 THE COURT: Well, are you telling me that the
24 government thinks that the evidence would support the
25 inference that she knew or should have known that the --

1 MS. FRENCH: I think the evidence --

2 THE COURT: -- attacks were going to occur?

3 MS. FRENCH: Yes.

4 THE COURT: Okay. Let me hear from you,

5 Mr. Prospere.

6 MR. PROSPERE: Judge, there is a statement in the
7 302 -- and Ms. Baker is here to speak to this -- that
8 indicates that there was no evidence that Ngozi Nnaji ever had
9 any knowledge of these sexual activities between Emmanuel and
10 Cecilia.

11 THE COURT: Well, it's more than just knowledge.
12 It's -- should she have foreseen?

13 MR. PROSPERE: Well, I don't think that she should --

14 THE COURT: Let me see what you're talking about. Do
15 you happen to have that?

16 MR. PROSPERE: I do not have that copy.

17 THE COURT: Do you happen to have one, Ms. French?
18 He says there was one that says that she had no knowledge of
19 any of the sexual --

20 MS. FRENCH: No, sir. I don't know if that is in
21 reference to her own statement to the FBI agent.

22 Is that what you're referring to?

23 MR. PROSPERE: No. It's a statement contained within
24 the 302s, the FBI's conclusion about -- at least what I
25 interpret it being the FBI's conclusion after looking into

1 these allegations in the matter of the sexual --

2 THE COURT: I haven't seen that. I'm not sure I've
3 seen all the 302s.

4 MS. FRENCH: Judge, with all due respect, I don't
5 recall that in the 302, and I just directed my attention to
6 the FBI agent who is giving me a negative nod. It does not
7 sound to me like something Special Agent Jennifer Baker would
8 ever speculate about or draw raw conclusions about.

9 THE COURT: I've never seen a 302 where it had those
10 kinds of statements. They report or they remark on without
11 reaching conclusions --

12 MS. FRENCH: Yes, sir.

13 THE COURT: -- normally is what I see. And I think
14 they prepare reports to give the prosecutor their expressed
15 thoughts as to what the evidence establishes from that
16 perspective, but I don't suppose you don't show that to
17 Mr. Prospere, do you?

18 Ms. French, does he get the reports, the prosecutor gives
19 the assistant prosecutor in trial preparation and
20 presentation?

21 MS. FRENCH: I'm sorry. I don't have any report of
22 that nature from the FBI, sir.

23 THE COURT: Oh, I thought that the investigating
24 agency normally gave the prosecutor such a report?

25 MS. FRENCH: No. We receive all of the 302s, all of

1 the reports, from the FBI for all of the interviews and all of
2 the investigation. All those, a hundred percent of them, have
3 been given to defense counsel, and I have --

4 THE COURT: And you're telling me there is no report
5 where an FBI agent has reached a conclusion --

6 MS. FRENCH: No, sir. No, sir.

7 THE COURT: You're going to have to let me me talk
8 and then you talk.

9 MS. FRENCH: Sorry.

10 THE COURT: We have to talk one at a time.

11 MS. FRENCH: Sure.

12 THE COURT: Because the court reporter hasn't yet
13 learned to take this down both at the same time.

14 You're telling me there is no report where the FBI agent
15 reaches a conclusion that the defendant didn't know anything
16 about the sexual activity between her husband and the victim?

17 MS. FRENCH: I'm saying to the Court that I have
18 absolutely no recollection of that sentence as described by
19 Mr. Prospere in any report.

20 THE COURT: You're not going to answer my question?
21 Do you want to restate the question and answer your question?

22 MS. FRENCH: No. I don't recall that sentence in any
23 report, sir.

24 THE COURT: Okay. And is the FBI agent here where
25 you can make an inquiry?

1 MS. FRENCH: Yes, sir.

2 THE COURT: What is your name? You were identified
3 during the trial. What is your name?

4 MS. BAKER: Jennifer Baker.

5 THE COURT: Okay. You heard what Mr. Prospere said
6 about one of your reports.

7 Are you talking about one of her reports?

8 MR. PROSPERE: Judge, I believe it is. I believe it
9 is. There were two agents. She took over, I think I'm
10 correct, from another agent, but my clear recollection is that
11 there is a statement in the 302s to the effect that my client
12 had no knowledge of the sexual activities on the part of her
13 husband. Now, whether she wrote the 302 or it was a 302 that
14 was written that she adopted subsequently, I don't know.

15 THE COURT: Are you aware of any such statement in
16 any of the 302s?

17 MS. BAKER: There is no such statement, but I believe
18 what he may be thinking of is I made an agent note, which was,
19 when I asked her, if I recall, had she been aware of any -- I
20 don't know how I put the question, but had she been aware of
21 Emmanuel mistreating Cecilia, and at that point she broke down
22 and started crying and gave me the comments that I have the
23 best husband in the world. All my co-workers say he's such a
24 great husband, and I made the note at this point in the
25 interview Ngozi Nnaji began to cry and gave the explanation

1 that her husband is a great husband. That may be what he's
2 thinking about.

3 THE COURT: Is that the closest you can think of
4 that's in any of the 302s?

5 MS. BAKER: Correct.

6 THE COURT: That it would be something he might have
7 in mind?

8 MS. BAKER: Yes, because in the 302s, I do not make
9 personal opinions. If there is an observation, I include that
10 as an agent note, and I made the observation, but it's not a
11 personal opinion, sir.

12 THE COURT: Well, it's a close question.

13 I'll tell you what. Since it's not in the presentence
14 report, and, apparently, some of the information I've had to
15 rely on, if I found from a preponderance of the evidence that
16 she should have known about it or did know about it, is not
17 recited in the presentence report.

18 I think you told me about things, Ms. French, that are in
19 those 302s that aren't in the presentence report. Am I
20 correct?

21 MS. FRENCH: That is correct, sir, yes.

22 THE COURT: And I don't think I can make findings at
23 this time without Mr. Prospere having advance notice of what
24 I'm relying on or his client having advanced notice. So I'm
25 not going to have that increase based on the sexual conduct.

1 So you can take that out of consideration.

2 MR. PROSPERE: Yes, sir.

3 THE COURT: Though, I really think it probably should
4 be given, but I'm not.

5 Okay. So let me go to -- I think both defendants have
6 objected to the two-level increase based on obstruction of
7 justice. So we're going to deal with that together.

8 So why don't you step aside just a minute, Mr. Prospere,
9 with your client, and I'll have Mr. Nnaji come to the
10 microphone with his attorney, and I'll ask him a few questions
11 before we get to him and that objection.

12 Mr. Nnaji, you appeared before me -- well, I've already
13 gone through this about what the jury found you guilty of and
14 that we're here today for sentencing based on those things.

15 Ms. Cadeddu, did you and your client receive in a timely
16 manner the presentence report and the addenda to it?

17 MS. CADEDDU: Yes, Your Honor, we did.

18 THE COURT: And did both of you read those items and
19 then discuss them with each other?

20 MS. CADEDDU: Yes, sir, we did.

21 THE COURT: I'm assuming that you were the one
22 involved in doing those things. Is that a safe assumption?

23 MS. CADEDDU: Yes, Your Honor, that is correct.

24 Mr. Westfall was also involved, but, yes, I was.

25 THE COURT: Okay. There was some presentence -- some

1 objections made. Have you seen the order where I have
2 expressed my tentative -- well, you have seen the government's
3 response to the objections and then the probation officer's
4 response to objections and my order saying -- expressing my
5 tentative conclusion that they are without merit?

6 MS. CADEDDU: Yes, Your Honor, I have.

7 THE COURT: Do you still wish to urge all of those
8 objections or some of them or what?

9 MS. CADEDDU: Well, Your Honor, actually, I believe
10 that we made three objections, two of which have been accepted
11 by probation already.

12 THE COURT: Okay. And the third one is the two-level
13 increase?

14 MS. CADEDDU: Yes, sir, that's correct.

15 THE COURT: So that ends up being the only objection
16 that either defendant has at this time?

17 MS. CADEDDU: That's correct, Your Honor.

18 THE COURT: Okay. Do you want to offer any evidence
19 in support of your client's objection to the two-level
20 increase?

21 MS. CADEDDU: No, Your Honor. I have argument.

22 THE COURT: Mr. Prospere, do you want to offer any
23 evidence in support of your client's objection to the
24 two-level increase?

25 MR. PROSPERE: Judge, the only evidence we would

1 offer is attached to the objection itself, which is the
2 e-mailed fax, I think, that was sent in response to the
3 government's making us aware of the fact that this was at
4 issue. It's attached to the objection that was filed in
5 regards to this matter.

6 MS. CADEDDU: Yes, sir. I would concur, Your Honor,
7 with that, Your Honor. I have no additional evidence in
8 addition to that.

9 THE COURT: Let me see what you're talking about.

10 By the way, I notice that one of the documents -- I think
11 it was in Mr. Nnaji's case -- referred to the people who
12 contacted the victim's family as his relatives or his
13 brothers, and I think it's clear that they were hers. Does
14 everybody agree with that?

15 MS. CADEDDU: Thank you, Your Honor, yes.

16 THE COURT: Well, for some reason or other, I can't
17 find the --

18 MS. CADEDDU: Your Honor, I believe the e-mail is
19 attached to -- I know it's attached to Mr. Nnaji's objections
20 to the presentence report.

21 THE COURT: Okay. I'm looking at hers. Let's see.
22 Are you talking about Exhibit A to your objections,
23 Mr. Prospere?

24 MR. PROSPERE: Sir, I'm sorry?

25 THE COURT: Are you talking about Exhibit A to your

1 objections?

2 MR. PROSPERE: Yes, sir.

3 THE COURT: Is that the e-mail you're talking about,
4 the fax or whatever?

5 MR. PROSPERE: Yes, sir.

6 THE COURT: It says, "Dear Fidelis (phonetic), this
7 is my e-mail address -- and it gives an e-mail address -- for
8 fax messages --

9 MR. PROSPERE: It actually would be the next page, is
10 the e-mail that we sent.

11 THE COURT: Okay. The next page is what your client
12 sent to her sister?

13 MR. PROSPERE: To her brother.

14 THE COURT: To her brother.

15 (Brief pause in proceedings)

16 THE COURT: Let me ask you this, Ms. French. What do
17 you think there is in the presentence report factually that
18 would support a finding that either of these defendants knew
19 that the threatening conduct was being engaged in?

20 MS. FRENCH: I guess Page 11, sir. I'm now looking
21 at the presentence report, Pages 11 and 12.

22 THE COURT: Pages 11 and 12?

23 MS. FRENCH: There is a brief factual recitation, and
24 then in the addendum --

25 THE COURT: Well, all I recall seeing was that

1 members of her family contacted members of the victim's
2 family --

3 MS. FRENCH: That's correct.

4 THE COURT: I don't have any knowledge of anything
5 that now occurs to me that either of these defendants knew
6 that was going on or encouraged it to go on. Do you have some
7 knowledge?

8 MS. FRENCH: I think that the testimony at trial
9 first directed specifically to threats was presented by Gladys
10 Nwokonkwo, who is the daughter of the victim. She testified
11 about a visit from the brother of the female defendant and,
12 also, his sister. So there was direct testimony at trial
13 about attempting to locate the --

14 THE COURT: I'll assume that the people in Nigeria
15 did those things?

16 MS. FRENCH: Right.

17 THE COURT: The issue is whether these defendants
18 encouraged them to do it or if he even knew they were doing
19 it?

20 MS. FRENCH: I don't think there is any direct
21 evidence, Your Honor. I think, however, the nature of the
22 conspiracy from the beginning to the end show that the male
23 defendant was an integral part of the plan or scheme. It was
24 the male defendant who was involved with the female
25 defendant's family in Nigeria to initiate the recruitment, to

1 create false documents, and that the female defendant's family
2 members were the conduit in Nigeria for both the male and
3 female defendant throughout the eight-year scheme. That was
4 how it worked. In other words, when there were communications
5 with the victim's family in Nigeria, it always involved the
6 female defendant. So I think it's reasonably foreseeable that
7 the male defendant knew what was going on in Nigeria.

8 The only people that interest was served whatsoever by the
9 intimidation of trying to keep this information from becoming
10 public were, in fact, both defendants and that it had been
11 part of the scheme for eight years that he felt defendant's
12 families were -- family members of Nigeria were communicators
13 to the victim's family members.

14 THE COURT: Okay. Mr. Prospere, did you want to make
15 some statement on this subject?

16 MR. PROSPERE: Well, Judge, again, I think the
17 Court's question directing her to try to supply an answer as
18 to whether or not there was any direct evidence that could
19 impute knowledge to either of these people is appropriate. I
20 listened to her talk for several minutes, and the one word
21 answer to your question would have been, no, there is no
22 direct evidence. It's just assumption.

23 THE COURT: Well, I asked if there's any evidence
24 from which it can be inferred, which may not necessarily be
25 direct evidence. It may be circumstantial evidence.

1 MR. PROSPERE: I don't think there's any
2 circumstantial evidence in which it could be inferred, and I
3 think we were put on notice that this could be -- was an issue
4 as far as the government was concerned, and I think the date
5 this e-mail was sent is January '06. So if it had been going
6 on earlier than that, certainly, we were not made aware of it.
7 When we were made aware of it, we sent the e-mail and tried to
8 make contact as quickly as we could. And, you know, things
9 that go on over there culturally, we try to explain to them
10 aren't acceptable over here, and we tried to communicate that
11 in language a four-year-old should understand, and that's what
12 we tried to do. That's all they could do at that point in
13 time.

14 THE COURT: Okay. Ms. Cadeddu?

15 MS. CADEDDU: Yes, Your Honor. I would adopt
16 Mr. Prospere's argument, but I would also add that in this
17 case, with respect to Mr. Nnaji, we're even one iteration
18 further removed. So it's Ngozi Nnaji's relatives who are
19 making these threats. There isn't any direct evidence. There
20 is not even any circumstantial evidence that the government
21 could point to to show even Mrs. Nnaji's knowledge of that,
22 and there is certainly no evidence whatsoever that could take
23 that out, another iteration, to show that Mr. Emmanuel
24 Nnaji directed, induced, and procured that conduct.

25 I would add that the government makes what sounds like a

1 conspiracy argument, and I think that was in the response to
2 the objection, but -- so that the defendants were somehow
3 responsible on a conspiracy theory for the conduct of Francis
4 -- I cannot say the name, the brother of -- Mrs. Nnaji's
5 brother in Nigeria. The problem with that theory is that the
6 conspiracy was alleged to have been completed. The
7 allegations in the indictment are that it was over in February
8 of 2006, and all of these alleged threats -- I mean, I'm
9 assuming that the threats occurred like Your Honor is -- these
10 threats occurred all after the end of the conspiracy date
11 charged in the indictment.

12 So they can't be held accountable for a conspiracy theory
13 because they were occurring outside the scope of the
14 conspiracy, and there just isn't any direct or circumstantial
15 evidence that would allow the Court to infer or impute
16 knowledge that that was going on.

17 THE COURT: Do you have anything else you want to
18 say, Ms. French?

19 MS. FRENCH: Yes. I would request that the Court
20 adopt the factual statements in the government's response to
21 both Defendant Ngozi Nnaji's objections to the presentence
22 report as well as Emmanuel's that we filed, which set forth
23 the facts according to the obstruction count, and just to
24 highlight that the threats began the days of the victim
25 escaping back in February 2006.

1 The only inference that can be drawn is that the threats
2 were directly set in motion by the defendants, Judge, and they
3 continued through -- and this is relevant conduct to the
4 offense -- they continued through close to trial, and some of
5 the recurring threats that are set forth in here involved
6 reaching out to the Roman Catholic priest, who was the
7 rescuer, attempting to intimidate him from coming to court
8 directly before trial, and he has, the Court recalls,
9 testified. So there's --

10 THE COURT: Where are you looking now?

11 MS. FRENCH: I am on the government's response to
12 Defendant Ngozi Nnaji's objections to the presentence report.
13 We filed a very similar response to Emmanuel Nnaji's
14 objections, and we set forth --

15 THE COURT: Let me find what you're talking about.

16 MS. FRENCH: Certainly.

17 (Brief pause in proceedings)

18 THE COURT: Well, I'm afraid I can't find from a
19 preponderance of the evidence that these defendants knew those
20 threats were going to be made or did anything to encourage
21 them to be made. I think an equal possibility -- you can
22 equally infer that the members of the family and the family of
23 Mrs. Nnaji simply took it upon themselves to try to discourage
24 people from doing the things that were to the disadvantage of
25 the defendant. So I'm going to sustain those objections. So

1 I'll need some recalculations on that.

2 I take it I've dealt with all the objections that
3 Ms. Nnaji has?

4 MR. PROSPERE: Yes, Judge.

5 THE COURT: And I have dealt with all the objections
6 that Mr. Nnaji has?

7 MS. CADEDDU: Yes, Your Honor.

8 THE COURT: Okay. There being no further objections
9 to the presentence report as to either defendant, the Court
10 adopts as the fact findings of the Court as to each of the
11 defendants the facts set forth in the presentence report as to
12 that defendant as modified or supplemented by any addendum to
13 the presentence report, any facts stated in the addendum, and
14 any facts I found from the bench.

15 And the Court adopts as the conclusions of the Court --
16 the conclusions as to each defendant the conclusions set forth
17 in that defendant's presentence report as modified or
18 supplemented by any addendum as to that defendant and any
19 facts I found from the bench as to that defendant.

20 (Brief pause in proceedings)

21 THE COURT: The Court concludes as to Ms. Nnaji as to
22 the advisory guideline information that the Total Offense
23 Level is 29; that the Criminal History Category is I; that the
24 imprisonment range as to Count 1 is 60 months, which is the
25 maximum -- statutory maximum; that the imprisonment range as

1 to Count 2 is 87 to 108 months; that the imprisonment range as
2 to Count 3 is 87 to 108 months; that the imprisonment range as
3 to Count 4 is 87 to 108 months; and that the imprisonment
4 range as to Count 5 is 60, which is the statutory maximum.
5 And the imprisonment range as to Count 6 is 60; that the
6 supervised release range is two to three years as to each
7 count; and that the fine range is \$12,500 to \$1,500,000, and
8 that a special assessment of \$600 -- that is \$100 per count
9 per conviction -- is mandatory.

10 As to Defendant Emmanuel Nnaji, Mr. Nnaji, the Court
11 finds -- or concludes that the total offense level is 34; that
12 the Criminal History Category is I; that the imprisonment
13 range is 151 to 188 months as to Count -- no. As to Count
14 1 -- let me back up on the imprisonment range.

15 The advisory imprisonment range as to Count 1 is 60
16 months, which is the statutory maximum as to Count 1. The
17 advisory range as to Count 2, imprisonment range, is 151 to
18 188 months. The advisory imprisonment range as to Count 3 is
19 120 months, which is the statutory maximum, and the advisory
20 imprisonment range as to Count 4 is 120 months, which is the
21 statutory maximum. That the advisory imprisonment range as to
22 Count 5 is 60 months with respect to the maximum, and the
23 advisory imprisonment range as to Count 7 is 60 months, which
24 is the statutory maximum, and that the supervised release
25 range is two to three years per count. The fine range is

1 \$17,500 to \$1,500,000, and that a special assessment of \$600
2 is mandatory. That is \$100 per count per conviction.

3 Okay. Mr. Prospere, I'm going to let you -- well, we'll
4 start with Ms. Cadeddu. You can make whatever statement you
5 would like to make -- we'll come back to you, Mr. Prospere.
6 We're going to start with Ms. Cadeddu.

7 MS. CADEDDU: Okay. Thank you, Your Honor.

8 Your Honor, on behalf of Mr. Nnaji, we filed a sentencing
9 memorandum in this case to give the Court a little more
10 insight into --

11 THE COURT: I've read that. Thank you for submitting
12 that.

13 MS. CADEDDU: Thank you, sir.

14 I think in this case the two most important factors,
15 nonguideline-related factors, are Mr. Nnaji's lack of any
16 criminal history and, also, his work history and the type of
17 work he did. And I think that the Court can and should
18 consider Emmanuel Nnaji's work with terminally and chronically
19 ill patients, and the fact that he had a career change in
20 order to be able to assist those folks.

21 The impetus for the career change for Mr. Nnaji was the
22 fact that there's a number of family members suffering from
23 chronic disease, including the deaths from diabetes-related
24 complications of his mother and two sisters, as well as the
25 drawn out illness of his late wife and the mother of his two

1 oldest children.

2 I received, actually, yesterday -- and I apologize for
3 this, Your Honor. It came to my office yesterday, but it's a
4 letter confirming Mr. Nnaji's employment with the Kind Heart
5 Home Health System, and I would like to read that into the
6 record for the Court because I think it gives some indication
7 of the type of work he did.

8 Your Honor, my name is Ekwutosi Akintoye. I have lived in
9 the Dallas area for ten years with my family. I have had the
10 pleasure of knowing and working with Mr. Nnaji the past two
11 years. During the years of our acquaintance, I have known
12 Mr. Nnaji in many capacities. We have worked together as
13 nurses with Kind Heart Home Health. Mr. Nnaji is a well-liked
14 nurse in our company by other employees as well as patients.

15 Mr. Nnaji has shown good compassion towards all our
16 patients, especially the ones with diabetes. Mr. Nnaji gave
17 up a career as an engineer to go into nursing after losing
18 both his mother and sister to diabetes. Mr. Nnaji dedicated
19 his time to doing research on diabetes to give his patients
20 options on ways to live and cope with the disease.

21 Mr. Nnaji is a good, compassionate, intelligent, and
22 personable man. He's always prepared for his job and shows
23 great compassion towards his career and his patients. He's
24 always quick on his feet with sensible reactions to sometimes
25 difficult situations that I've seen him in.

1 And that is signed by Ms. Akintoye.

2 I think, Your Honor, that the charges in this case,
3 although very serious, are not the complete measure of a man.
4 Mr. Nnaji did work and did do good work with terminally and
5 chronically ill people, and that work really did change the
6 lives of those people. He did a lot of good for very, very
7 sick patients, and I would ask that the Court consider that in
8 sentencing him.

9 And other than my client's allocution, Your Honor, I
10 believe that's going to be my presentation.

11 THE COURT: Okay. Mr. Nnaji, you have the right to
12 make any statement or presentation you would like to make on
13 the subject of mitigation, that is, the things you think the
14 Court should take into account in determining what sentence to
15 impose or on the subject of sentencing more generally.

16 MS. CADEDDU: Your Honor?

17 THE COURT: Yes.

18 MS. CADEDDU: I apologize, Your Honor, but
19 Mr. Nnaji's accent is a little difficult. So he has his
20 statement prepared, and with the Court's permission, I would
21 like to give you a written copy of that so that you can follow
22 along.

23 THE COURT: Okay. Let me finish what I was saying.

24 MS. CADEDDU: I'm sorry, sir.

25 THE COURT: Mr. Nnaji, you have the right to make any

1 statement or presentation you would like to make on the
2 subject of mitigation, that is, the things you think the Court
3 should take into account in determining what sentence to
4 impose or on the subject of sentencing more generally, and at
5 this time, I'm going to invite you to do that.

6 And as I understand it -- tell me what it is -- how does
7 Mr. Nnaji wish to make his statement?

8 MS. CADEDDU: He will read the statement, Your Honor,
9 that he has prepared, but because his accent is a little
10 difficult to follow, we've prepared a typewritten copy.

11 THE COURT: Okay. Give the court reporter a copy of
12 it.

13 MS. CADEDDU: Thank you, Your Honor.

14 And would the Court also like a copy of the letter I read
15 into the record, or is that not necessary?

16 THE COURT: That probably would be a good idea to
17 give me a copy of it.

18 MS. CADEDDU: Thank you, sir.

19 THE WITNESS: Okay. You may proceed, Mr. Nnaji.

20 DEFENDANT E. NNAJI: Thank you, Your Honor.

21 Dear Honorable Judge McBryde: My court date is today, and
22 I stand in the shadow of your justice and beg for your mercy
23 and leniency. This is my first ever offense, and I promise it
24 will be my very last. Please be merciful and lenient for
25 God's sake and for my children's sake.

1 To begin with, my name is Emmanuel Nnaji, and I'm 50 years
2 old. I was born and nurtured by my mother, Comfort Nnaji, who
3 died in 2002 of diabetes complication, multiple strokes. She
4 was 61 years old. My mother was separated from my father when
5 I was only four months old, and my father died four years
6 later of heart attack at the age of 55 years old. I am the
7 only male and the last born of two children.

8 My two sisters, Theresa and Lucy, both died the same year
9 in 1998 due to diabetes-related complications. My only
10 remaining sister, Christine, sponsored me to U.S. and paid all
11 my educational expenses, which resulted to bachelor of science
12 in industrial engineering.

13 Currently, my sister, Christine, is dying from years of
14 battling diabetes with neuropathy in both lower extremities.
15 I am the only remaining healthy one of the family. I'm also
16 diabetic, diagnosed since 1997, managed with Metformin,
17 Glimepiride, and insulin.

18 My mother raised me as a Christian with a high moral
19 standard, respectful to others, and to cherish Bible and
20 education as my way out in life. I followed her advice.
21 Besides my degree in industrial engineering, I am also a
22 graduate of Texas Women's University with bachelor of science
23 in nursing with a business degree, both three points average.
24 Your Honor, I went into nursing career for one main purpose,
25 that is, to help and rescue the sick and suffering.

1 My first wife, Theresa Nnaji, died of Lupus in 1999.
2 Watching her life slipping away as I daily took care of her,
3 including taking her to dialysis centers thrice weekly
4 inspired me to go into a profession that will enable to help
5 others in similar conditions. I am glad I did because I have
6 put many smiles on many of my seriously ill patients and
7 families.

8 Once again, Noble Judge, I stand at the shadow of your
9 justice. Noble Judge, you are my only hope. Whatever
10 sentence you pronounce today is a just punishment, but please
11 be merciful and please be lenient. Thank you.

12 THE COURT: Okay. I believe I indicated in my order
13 of a few days ago that I tentatively concluded that a sentence
14 above the top of the guideline range would be appropriate in
15 this case as to this defendant, and I'm still -- maybe more so
16 than ever -- that if it be a sentence within the guideline
17 range as to this defendant, it would not be -- as to
18 imprisonment, it would not be a large enough sentence to
19 adequately address the defendant's behavior, criminal
20 behavior.

21 As reflected by Paragraphs -- I think it's 131 and 132 of
22 the addendum to the presentence report and, also, in the body,
23 the defendant assaulted or raped the victim on at least two
24 different occasions, but only one of those assaults was used
25 to determine the advisory guideline computations. Had both of

1 them been considered, the combined advisory guideline level
2 would have been higher, and the guideline range would have
3 been significantly higher than it is now.

4 Based on the information the Court has, the Court finds
5 that a sentence outside the advisory guideline range would be
6 a reasonable sentence in this case and would reflect the
7 nature and circumstances of the offense and the history and
8 characteristics of the defendant and would adequately address
9 the need to reflect the seriousness of the defendant's
10 offenses and to promote respect for the law and to provide
11 just punishment for the offenses. All is contemplated by 18,
12 United States Code, Section 3553(a).

13 I've decided that a sentence of -- a combined sentence as
14 to all of the counts of 240 months would be a sentence that
15 would be a reasonable sentence that will take into account all
16 the factors the Court should consider that would be divided
17 amongst the different counts that would seem best to define
18 them.

19 (Brief pause in proceedings)

20 THE COURT: Okay. I think we've figured out how to
21 achieve what I think to be a reasonable sentence in this case.
22 The Court orders and adjudges that the defendant be committed
23 to the custody of the Bureau of Prisons to serve a term of
24 imprisonment of 60 months as to Count 1 of the indictment --
25 okay, 60 months as to Count 1 of the indictment; 240 months as

1 to Count 2 of the indictment; 60 months as to Count 3 of the
2 indictment; 60 months as to Count 4 of the indictment.

3 Let me back up. 60 months as to Count 1; 240 months as to
4 Count 2; 120 months each as to Counts 3 and 4; and 60 months
5 each as to Counts 5 and 6, all to run concurrently for an
6 aggregate sentence of 240 months. So that's the sentence I'm
7 imposing as the sentence of imprisonment.

8 Now, in addition, the Court is ordering that the defendant
9 have the forfeiture that is applicable --

10 MS. FRENCH: Judge, the forfeiture we did not proceed
11 on because the house had a net equity.

12 THE COURT: Okay. Well, we won't do that then.

13 The Court is ordering that the defendant make full
14 restitution jointly and severally with his wife, Ngozi, and
15 that restitution will be in the amount of \$305,957.60. Now,
16 that restitution is payable immediately, but nonpayment will
17 not be a violation of the defendant's conditions of supervised
18 release so long as he pays, and that will be provided in those
19 conditions.

20 All restitution payments shall be made by the defendant to
21 the clerk of the Court here in Fort Worth for disbursement to
22 the victims, Cecilia -- and I have a hard time pronouncing her
23 last name. It's the victim. We all know the name of the
24 victim. And those payments will be sent to her at the address
25 that will be set forth in the judgment of conviction and

1 sentence.

2 I'm not ordering that the defendant pay a fine because I
3 don't have any reason to think the defendant would have the
4 resources to do that as well as make restitution.

5 I am ordering that the defendant serve a term of
6 supervised release of three years as to each of the counts of
7 conviction, 1 through 5 and 7, to run concurrently with each
8 other. Now, the conditions of that supervised release will be
9 the standard conditions that will be set forth in the judgment
10 of conviction and sentence and the following additional
11 conditions:

12 The defendant shall not commit another federal, state, or
13 local crime. The defendant shall not possess illegal
14 controlled substances. The defendant shall cooperate in the
15 collection of DNA as directed by the probation officer and as
16 authorized by the Justice For All Act of 2004.

17 Now, when the defendant's term of supervised release
18 starts, any part of the restitution obligation, that is, the
19 305,957.60 remains unpaid, the defendant will make payments on
20 that unpaid balance at the rate of at least \$200 a month, and
21 the first of those payments is to be made no later than 60
22 days after his release from confinement and another should be
23 made on the same day of each month thereafter until the full
24 restitution amount is paid. Any unpaid balance of that
25 restitution ordered by the judgment shall be paid in full 60

1 days prior to the termination of the defendant's term of
2 supervised release, the conditions of the supervised release.

3 Going on with the conditions, the defendant shall refrain
4 from incurring new credit charges or opening additional lines
5 of credit without approval of the probation officer unless the
6 probation officer makes the determination that the defendant
7 is fully satisfying his restitution obligation.

8 I'm also ordering the defendant to pay a special
9 assessment of \$600. That's payable immediately to the United
10 States of America through the office of the United States
11 Clerk, that is, \$100 per count of conviction.

12 Let's see. Mr. Nnaji, you have the right to appeal from
13 the sentence I've imposed if you're dissatisfied with it.
14 That appeal would be to the United States Court of Appeals for
15 the Fifth Circuit. You have the right to appeal in forma
16 pauperis. That means without any cost to you if you qualify
17 for it. You have the right to have the clerk of the Court
18 file a notice of appeal for you, and the clerk will do that
19 forthwith if you were to specifically request it.

20 You and your attorney have been given a form that outlines
21 certain rights and obligations in reference to an appeal. If
22 you haven't already done so, I want the two of you to review
23 it to be sure you understand it, and once both of you are
24 satisfied you understand it, I want both of you to sign and
25 return it to the Court coordinator.

1 Has that been done?

2 MS. CADEDDU: It has, Your Honor.

3 THE COURT: Okay. The defendant is remanded to
4 custody of --

5 MS. CADEDDU: Your Honor? I'm sorry, Your Honor. If
6 I may, I have a couple of housekeeping matters.

7 I need to object for record purposes to the
8 above-guideline sentence and object to the substantive and
9 procedural reasonableness grounds.

10 And then I just wanted to ask -- Mr. Westfall asked me to
11 ask the Court -- actually, I'm raising an objection --

12 THE COURT: I'm sorry. I'm not understanding. You
13 can make whatever objections you want to make. I've made my
14 rulings.

15 MS. CADEDDU: Okay. Thank you, Your Honor.

16 And then I also would like to find -- I would like to ask
17 the Court on behalf of Mr. Westfall for a finding of
18 Mr. Nnaji's indigence based on the presentence report --

19 THE COURT: Finding of what?

20 MS. CADEDDU: Indigence, Your Honor, based on the
21 presentence report.

22 THE COURT: I'm not going to make that finding now.
23 If he wants to qualify for that, do an appropriate motion with
24 whatever documentation is required to support that motion.

25 MS. CADEDDU: I will convey that to Mr. Westfall.

1 THE COURT: Okay.

2 MS. CADEDDU: Thank you, Your Honor.

3 THE COURT: Okay. Now, we're going back to Defendant
4 Ngozi Nnaji --

5 MS. CADEDDU: May I be excused, Your Honor?

6 THE COURT: You're excused. The defendant, your
7 client, is remanded to custody, and you're excused.

8 She is back to the microphone. Ngozi Nnaji is back to the
9 microphone with her attorney, Mr. Prospere.

10 And, Mr. Prospere, you can make whatever statement you
11 would like to make on behalf of your client at this time.

12 MR. PROSPERE: Judge, I would just like to ask the
13 Court in assessing the sentence that you're going to assess in
14 this case to take into account the certain collateral
15 consequences to Ms. Nnaji, one, being the loss of children,
16 and, two, is the certain deportation that will follow whatever
17 sentence the Court will impose.

18 Certainly, the impact of the convictions in this case are
19 more severe on her than, in fact, they are on her husband for
20 those reasons, and I would ask the Court to take that into
21 account in assessing her sentence.

22 Those are all the remarks I have, Your Honor. Ms. Nnaji
23 has a statement she would like to read to the Court, and she's
24 made an additional copy that would be easier for you to follow
25 along.

1 THE COURT: Okay. If you want to hand it up, that
2 might be helpful.

3 Ms. Nnaji, you have the right to make any statement or
4 presentation you would like to make on the subject of
5 mitigation, that is, the things you think the Court should
6 take into account in determining what sentence to impose or on
7 the subject of sentencing more generally, and at this time
8 I'll invite you to do that is.

9 DEFENDANT N. NNAJI: Your Honor and respected Judge
10 John McBryde.

11 Thank you, Your Honor, for giving me the opportunity to
12 speak before you pass down your judgment. Please take into
13 consideration the positive events in our lives. We have lived
14 in this country for over 23 years. We have three beautiful
15 young children. Our family have never, ever had any problem
16 with anybody. Both my husband and I have lived productive
17 life in this country.

18 My husband has gone to college to be a nurse at one of
19 your finest university in Texas, and I have worked in the
20 medical field for the last 12 years at the same hospital
21 taking care of patients.

22 Your Honor, the most important things in this world are my
23 three little children, Michael, nine years old with severe
24 asthma, Precious, 10 years old with learning disability, and
25 Joy, 12 years old. They are now living in a strange home.

1 They need their parents to be in their lives.

2 With all due respect to Your Honor, and in God we trust, I
3 respectfully request your mercy and consideration in this
4 matter. We have learned valuable lesson. Thank you for your
5 time. May the joy of the Lord be your strength. May the Lord
6 be precious to your soul, and may Angel Michael guide you
7 always. Thank you.

8 THE COURT: Okay. Do you have anything else?

9 MR. PROSPERE: No, Your Honor.

10 THE COURT: Okay. Well, I think in the case of
11 Ms. Nnaji, a sentence within the guideline range -- advisory
12 guideline range would be a reasonable sentence in this case.
13 I think a sentence at the top of it, though, collectively is
14 necessary for there to be a sentence adequate to address her
15 conduct and all of the factors the Court should consider under
16 18, United States Code, Section 3553(a).

17 So my plan is to impose a sentence that collectively
18 produces a sentence of imprisonment of 108 months. Plus,
19 there will be restitution of \$305,957.60 jointly and severally
20 with her husband, and I think a term of supervised release of
21 three years as to each of the Counts 1 through 6 would be
22 appropriate, and a special assessment of \$600. That is \$100
23 per count of conviction. As I indicated, I think a sentence
24 of that kind would be a reasonable sentence that would
25 adequately and appropriately address all the factors the Court

1 should consider under 18, United States Code, Section
2 3553(a).

3 So the Court orders and adjudges that the defendant be
4 committed to the custody of the Bureau of Prisons to serve a
5 term of imprisonment of 180 months as to Counts -- each of
6 Counts -- 108, 1-0-8. I think I misspoke, 108 months -- as to
7 each of the Counts 2, 3, and 4, and to serve a term of
8 imprisonment of 60 months as to each of the Counts 1, 5, and
9 6. All of those terms of imprisonment are to run concurrent,
10 so that the aggregate term of imprisonment is 108 months.

11 I'm also ordering that the defendant make full restitution
12 to the victim of her criminal conduct, and that will be in the
13 amount of \$305,957.60. The restitution obligation, jointly
14 and severally, with the restitution obligation of Emmanuel
15 Nnaji is payable immediately -- her restitution obligation is
16 payable immediately, but nonpayment will not be a violation of
17 her conditions of supervised release so long as she pays as
18 will be provided in those conditions. All restitution
19 payments are to be made by the defendant to the clerk of the
20 Court here in Fort Worth for disbursement to
21 Cecilia Nwokonkwo -- I believe I finally got it fairly
22 close -- at the address that will be set forth in the judgment
23 of conviction and sentence.

24 I am not ordering the defendant to pay a fine because I
25 don't have any reason to think she has or will have the

1 resources to do that in addition to making her restitution
2 payments.

3 I'm also ordering that the defendant serve a term of
4 supervised release of three years as to each of the Counts 1
5 through 6 to run concurrent with each other. And then
6 pursuant to 18, United States Code, Section 3582(d), as a
7 condition of supervised release, once a defendant has
8 completed her sentence of imprisonment, she shall be
9 surrendered by the Federal Bureau of Prisons to a duly
10 authorized immigration official for deportation in accordance
11 with the established procedure provided by the Immigration and
12 Nationality Act. As a further condition of supervised
13 release, if the defendant is ordered deported, she shall
14 remain outside the United States.

15 Now, in the event the defendant is not deported
16 immediately upon release from imprisonment or should she ever
17 be within the United States during any portion of her term of
18 supervised release, she shall comply with the standard
19 conditions of supervised release that will be set forth in the
20 judgment of conviction and sentence, and she will be made
21 aware of those and shall comply with the following additional
22 conditions:

23 She shall not possess illegal controlled substances. She
24 shall not commit another federal, state, or local crime. She
25 shall cooperate in the collection of DNA as directed by the

1 probation officer and as authorized by the Justice For All Act
2 of 2004.

3 Now, when she starts her term of supervised release, any
4 form of that restitution obligation of \$305,957.60 remains
5 unpaid, she will make payments on that unpaid amount at the
6 rate of at least \$200 per month, and the first of those
7 payments is to be made no later than 60 days after her release
8 from confinement, and another is to be made on the same day of
9 each month thereafter until the full restitution amount is
10 paid. Any unpaid balance of the restitution is to be paid as
11 a condition of supervised release. If it's unpaid 60 days
12 prior to the termination of the terms of supervised release,
13 the full unpaid balance becomes due and payable at that time
14 as a condition of supervised release.

15 Going on with the conditions, the defendant shall refrain
16 from incurring new credit charges or opening additional lines
17 of credit without the approval of the probation officer unless
18 the probation officer makes a determination that the defendant
19 has fully satisfied her restitution obligations. The Court
20 further orders that the defendant pay a special assessment of
21 \$600, that is, \$100 per count of conviction. That's payable
22 immediately to the United States of America through the office
23 of the United States Clerk.

24 Ms. Nnaji, you have the right to appeal from your
25 conviction and the sentence I've imposed if you're

1 dissatisfied. That appeal would be to the United States Court
2 of Appeals for the Fifth Circuit. You have the right to
3 appeal in forma pauperis, and that would be without any cost
4 to you if you qualify for it. You have the right to have the
5 clerk of the Court file a notice of appeal for you, and the
6 clerk will do that forthwith if you were to specifically
7 request it.

8 You and your attorney have been given a form that outlines
9 certain rights and obligations in reference to an appeal. If
10 you haven't already done so, I want the two of you to review
11 it, and once both of you are satisfied you understand it, I
12 want both of you to sign it and return it to the Court
13 coordinator.

14 Has that been done?

15 MR. PROSPERE: Yes, Judge.

16 THE COURT: Okay. The defendant is remanded to
17 custody, and the attorneys are excused.

18 MR. PROSPERE: Judge, can I have one additional
19 request? I know this isn't binding on the Bureau of Prisons,
20 but if you could make a recommendation that she be assigned as
21 close to Texas as possible, she would appreciate that.

22 THE COURT: I don't make those recommendations.

23 MR. PROSPERE: Thank you.

24 May I be excused, Your Honor?

25 THE COURT: You're excused.

1 MR. FRANK: Your Honor, may we be excused?

2 THE COURT: You're excused, yes.

3 (End of proceedings, 10:40 a.m.)

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20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the record of proceedings in the above-entitled matter, and
23 that the transcript was prepared by me and under my
supervision.

24 s/ Ana P. Warren
Ana P. Warren, CSR #2302
U.S. District Court Reporter

February 4, 2010
Date

25 -oOo-